

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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DONTIE S. MITCHELL,

Plaintiff,

-v-

1:22-CV-613

ANTHONY J. ANNUCCI, and  
JOHN OR JANE DOE,

Defendants.  
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APPEARANCES:

OF COUNSEL:

DONTIE S. MITCHELL  
Plaintiff, Pro Se  
69 Second Avenue, 2nd Floor  
Albany, NY 12202

DAVID N. HURD  
United States District Judge

**ORDER ON REPORT & RECOMMENDATION**

On June 9, 2022, *pro se* plaintiff Dontie Mitchell (“plaintiff”), who is on post-release supervision following a term of imprisonment, filed this 42 U.S.C. § 1983 action alleging that defendants violated his First Amendment rights. Dkt. No. 1. According to plaintiff’s initial complaint, he has “informally adopted” a twelve-year-old boy and refused requests from the child’s mother to stay away from him. *Id.* The complaint alleged that the

child's mother has filed a police report that resulted in a more restrictive modification to the conditions of his post-release supervision. *Id.* Along with his complaint, plaintiff sought leave to proceed *in forma pauperis* ("IFP Application"). Dkt. No. 2. Thereafter, plaintiff also sought to obtain ECF credentials for purposes of electronic filing. Dkt. No. 3.

On June 9, 2022, plaintiff moved on an emergency basis for a temporary restraining order that would prevent defendants from enforcing a Special Parole Condition that prevents him from having any contact with minors, including the minor children with whom he has established a mentorship relationship. *See* Dkt. No. 4. That motion was denied on June 10, 2022, and this matter was referred to U.S. Magistrate Judge Daniel J. Stewart for an initial review of the sufficiency of the pleading. Dkt. No. 6.

On June 24, 2022, Judge Stewart granted plaintiff's IFP Application, Dkt. No. 7, denied plaintiff's request for ECF credentials, Dkt. No. 8, and advised by Report & Recommendation ("R&R") that plaintiff's complaint be dismissed without prejudice, *id.* As Judge Stewart explained, plaintiff had failed to allege that he engaged in any constitutionally protected activity, especially in light of his admission that his efforts to "mentor" the minor child "are contrary to the wishes of the parent." *Id.* However, in light of plaintiff's *pro se* status, Judge Stewart recommended that plaintiff be given an opportunity to amend his pleading. *Id.* That R&R was adopted in full over plaintiff's

objections on July 13, 2022. Dkt. No. 11. Thereafter, plaintiff filed a Second Amended Complaint.<sup>1</sup> Dkt. No. 12.

On August 29, 2022, Judge Stewart advised by R&R that plaintiff's Second Amended Complaint be dismissed. Dkt. No. 15. In Judge Stewart's view, plaintiff's amended pleading—which alleges a substantial similar set of facts related to plaintiff's mentorship relationship with youth in the community—failed to cure the defects previously identified. *Id.* And because plaintiff's federal claims failed to survive initial review, Judge Stewart also recommended that the Court decline to exercise supplemental jurisdiction over plaintiff's related claim under state law. *Id.*

Plaintiff has filed objections. Dkt. No. 16. Upon *de novo* review, the R&R will be accepted and adopted in all respects. *See* 28 U.S.C. § 636(b)(1)(C).

Therefore, it is

ORDERED that

1. The Report & Recommendation is ACCEPTED;
2. Plaintiff's complaint is DISMISSED;
3. Plaintiff's § 1983 claims are DISMISSED without further leave to amend;

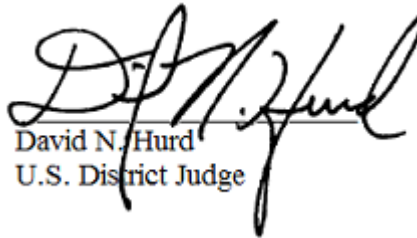
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<sup>1</sup> Plaintiff also re-asserted his request for a TRO that would preclude defendants from enforcing the Special Parole Condition. Dkt. No. 13. That motion was denied while plaintiff's amended complaint was under review. Dkt. No. 14.

4. Plaintiff's state law claims are DISMISSED without prejudice to renew in state court.

IT IS SO ORDERED.

Dated: September 20, 2022  
Utica, New York.



David N. Hurd  
U.S. District Judge